

Under the provisions of Section 413.031 of the Texas Workers' Compensation Act, Title 5, Subtitle A of the Texas Labor Code, effective June 17, 2001 and Commission Rule 133.305, titled Medical Dispute Resolution-General, and 133.307, titled Medical Dispute Resolution of a Medical Fee Dispute, a review was conducted by the Medical Review Division regarding a medical fee dispute between the requestor and the respondent named above.

## **I. DISPUTE**

1.
  - a. Whether there should be additional reimbursement for date of service 02/21/01?
  - b. The request was received on 02/13/02.

## **II. EXHIBITS**

1. Requestor, Exhibit 1:
  - a. TWCC-60a/b and Letter Requesting Dispute Resolution
  - b. UB-92s
  - c. EOBs
  - d. Reimbursement data (EOB from another carrier)
  - e. Medical Records
  - f. Any additional documentation submitted was considered, but has not been summarized because the documentation would not have affected the decision outcome.
2. Respondent, Exhibit 2:
  - a. TWCC-60a/b and Response to a Request for Dispute Resolution dated 05/30/02
  - b. Reimbursement data
  - c. Any additional documentation submitted was considered, but has not been summarized because the documentation would not have affected the decision outcome.
3. Per Rule 133.307 (g)(3), the Division forwarded a copy of the requestor's 14-day response to the insurance carrier on 05/17/02. Per Rule 133.307 (g)(4), the carrier representative signed for the copy on 05/20/02. The response from the insurance carrier was received in the Division on 05/31/02. Based on 133.307 (i) the insurance carrier's response is timely
4. Notice of Medical Dispute is reflected as Exhibit #3 of the Commission's case file

## **III. PARTIES' POSITIONS**

1. Requestor: letter undated  
“(Provider) does not feel the claim was paid as fair and reasonable. The total charge for the claim is \$11429.25. We received a payment of \$2236.00 which we do not feel is fair and reasonable for the services provided.
2. Respondent: letter dated 05/30/02  
“Carrier reduced payment for provider's usual and customary rate of \$11,429.25 to a fair and reasonable rate of \$2,236.00 as required under the Act. It should be noted that the

provider has not yet met its burden of showing that the amounts billed are fair and reasonable or that the amount paid by the carrier is not fair and reasonable.

#### **IV. FINDINGS**

1. Based on Commission Rule 133.307(d) (1&2), the only date of service eligible for review is 02/21/01.
2. The provider billed a total of \$11,429.25 on the date of service in dispute.
3. The carrier reimbursed a total of \$2,236.00 and their EOB has the denial "M – NO MAR SET BY TWCC-REDUCED TO FAIR AND REASONABLE." The reimbursement for all charges is reflected on the OR service line.
4. The amount in dispute per the TWCC-60 is \$9,193.25, the difference between the billed amount and the reimbursement received is.

#### **V. RATIONALE**

The medical documentation indicates the services were performed at an ambulatory surgery center. Commission Rule 134.401 (a)(4) states ASCs, "shall be reimbursed at a fair and reasonable rate..."

Section 413.011 (d) of the Texas Labor Code states, "Guidelines for medical services must be fair and reasonable and designed to ensure the quality of medical care and to achieve effective medical cost control. The guidelines may not provide for payment of a fee in excess of the fees charged for similar treatment of an injured individual of an equivalent standard of living and paid by that individual or by someone acting on that individual's behalf. The Commission shall consider the increased security of payment afforded by this subtitle in establishing the fee guidelines."

The carrier has not submitted its methodology for determining fair and reasonable reimbursement. Due to the amount reimbursed, it appears the carrier has incorporated the hospital inpatient surgical per diem in determining fair and reasonable. The provider has submitted one EOB from other carrier as an example of "fair and reasonable" reimbursement for same or similar services. Regardless of the carrier's methodology or response, the burden is on the provider to show that the amount of reimbursement requested is fair and reasonable. An analysis of recent decisions of the State Office of Administrative Hearings indicate minimal weight is given to EOBs for documenting fair and reasonable reimbursement. The willingness of some carriers to provide reimbursement at or near the billed amount does not necessarily document that the billed amount is fair and reasonable and does not show how effective medical cost control is achieved, a criteria identified in Sec. 413.011 (d) of the Texas Labor Code. The enclosed EOB provides no evidence of amounts paid on behalf of managed care patients of ASCs or on behalf of other non-workers' compensation patients with an equivalent standard of living. Therefore, based on the evidence available for review, the Requestor has not established entitlement to additional reimbursement.

The above Findings and Decision are hereby issued this 25<sup>th</sup> day of June, 2002.

MDR Tracking Number: M4-02-2053-01

Larry Beckham  
Medical Dispute Resolution Officer  
Medical Review Division

This document is signed under the authority delegated to me by Richard Reynolds, Executive Director, pursuant to the Texas Workers' Compensation Act, Texas Labor Code Sections 402.041 - 402.042 and re-delegated by Virginia May, Deputy Executive Director.